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ATTORNEYS FOR PLAINTIFF  
MARKHAM ROBINSON

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARKHAM ROBINSON, in his capacity as  
Presidential Elector and Chairperson-Elect of  
the American Independent Party,

Plaintiff,

v.

SECRETARY OF STATE DEBRA  
BOWEN, in her individual and official  
capacities, THE REPUBLICAN NATIONAL  
COMMITTEE, an organization, form  
unknown, THE REPUBLICAN PARTY OF  
CALIFORNIA, an organization, form  
unknown, SENATOR JOHN McCain, in his  
individual and official capacities, DOES  
ONE through FIFTY FIVE, inclusive.

Defendants.

Case No. \_\_\_\_\_

**PLAINTIFFS' COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Plaintiff alleges as follows:

**PARTIES**

1. Plaintiff MARKHAM ROBINSON (Mr. Robinson) is a natural person residing and domiciled in the State of California, in the County of Solano. Mr. Robinson is also Chairperson-Elect of the American Independent Party (AIP) and a certified AIP Presidential Elector on file with the California Secretary of State (See Cal. Elections Code 7578). Mr. Robinson is also a registered voter in the United States and in the State of California, and a federal and state taxpayer.

1           2.           The AIP is a political party organized and operating in the State of California,  
2 recognized as a political party and by California law (see Cal. Elections Code §§ 6500 *et seq.*, 7500  
3 *et seq.*) and recognized as a “qualified” political party by the California Secretary of State. (See,  
4 California Secretary of State’s website at [http://www.sos.ca.gov/elections/elections\\_f.htm](http://www.sos.ca.gov/elections/elections_f.htm).)

5           3.           Defendant SECRETARY OF STATE DEBRA BOWEN (Secretary Bowen) is the  
6 Secretary of State of California. She is named in her individual and official capacities.

7           4.           Defendant REPUBLICAN NATIONAL COMMITTEE (RNC) is an organization,  
8 form unknown. On information and belief, the RNC maintains offices and operates throughout  
9 the State of California.

10          5.           Defendant CALIFORNIA REPUBLICAN PARTY (CRP) is an organization, form  
11 unknown. On information and belief, the RNC maintains offices and operates throughout the  
12 State of California.

13          6.           Defendant SENATOR JOHN McCain (Senator McCain) is a natural person  
14 residing and domiciled in the State of Arizona. Senator McCain has obtained the support of the  
15 majority of Republican Delegates to the Republican National Convention, and is therefore the  
16 presumptive nominee of the Republican Party for President of the United States. Senator McCain  
17 is subject to personal jurisdiction because he is aggressively campaigning throughout the State of  
18 California and across the United States, and is actively soliciting California popular votes in  
19 anticipation of the general election, in which he will be on the California ballot that is the subject  
20 of this action. Senator McCain is named in his individual and official capacities.

21          7.           Defendants DOES ONE through FIFTY-FIVE, inclusive, are the California  
22 presidential electors of the Republican Party. Pursuant to law, the identities of DOES ONE  
23 through FIFTY-FIVE will be on file with the California Secretary of State on or before October 1,  
24 2008. Plaintiffs are presently unaware of the identities of the California presidential electors, and  
25 therefore refer to them with fictitious names. Does ONE through FIFTY-FIVE, inclusive, are  
26 therefore named in their individual and official capacities.

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## JURISDICTION AND VENUE

8. Subject-matter jurisdiction is proper under 28 U.S.C. § 1331 because this case involves questions of federal law. Further, there is supplementary jurisdiction over all state-law claims under 28 U.S.C. § 1367 because they arise out of a common set of facts with issues of federal law. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim have occurred, and are occurring, in the Northern District of California.

## GENERAL ALLEGATIONS

9. In November 2008, the United States will hold its presidential election. Through this process, each of the several states has a certain number of electoral votes, and each of the several states is free to choose how to cast those electoral votes.

10. The State of California has fifty-five electoral votes. The process in the State of California by which these electoral votes are cast is as follows:

- a. The several political parties eligible to be on the ballot, including the AIP, file their list of electors with the California Secretary of State. (Cal. Elections Code §§ 7100, *et seq.*)
- b. The Secretary of State places on the ballot each of the parties and their nominated candidate. (Cal. Elections Code § 6901.)
- c. The general election is held.
- d. Following the general election, the electors of the party and candidate with the most popular votes, in turn, cast their votes for president. (Cal. Elections Code §§ 6906, *et seq.*)

11. As reflected on the California Secretary of States website, both the Republican Party and the AIP are “qualified” parties eligible to appear – with their nominated candidates – on the California ballot in the upcoming presidential election. (See, Secretary of State’s website at [http://www.sos.ca.gov/elections/elections\\_f.htm](http://www.sos.ca.gov/elections/elections_f.htm))

12. The AIP has filed its list of electors with the California Secretary of State, which includes plaintiff.

13. The AIP has nominated Alan Keyes for President of the United States.

14. Senator McCain has received the support of the majority of delegates to the Republican National Convention. On information and belief, in accordance with applicable Republican primary rules, the Republican Party will formally nominate Senator McCain for President of the United States during the Republican National Convention, which is scheduled for September 1 through September 4, 2008.

15. On information and belief, if the Republican Party and its candidate, Senator McCain, receive the most popular votes in California and its fifty-five electors are entitled to cast their votes for the president in accordance with the procedure identified in fact 10(d) above, the fifty-five Republican electors (named herein as Does one through fifty) will each cast their vote for the Republican candidate, Senator McCain.<sup>1</sup> If Senator McCain receives more electoral votes than any other candidate, then he will become the next President of the United States. (U.S. Const., Art. II.)

16. As a voter, plaintiff Robinson will cast his vote for Alan Keyes during the general election. If applicable, as a presidential elector, Mr. Robinson will also cast his electoral vote for Alan Keyes.

17. On information and belief, Senator McCain was born in the Commonwealth of Panama in 1936, and is therefore not eligible to be President of the United States under Article II of the U.S. Constitution's "natural-born" citizen requirement.

18. As a Presidential Elector and Chairperson-Elect of a competing party on the ballot, plaintiff has a personal and distinct interest in the 2008 presidential election sufficient to establish his standing to challenge the legitimacy of rival campaigns.

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<sup>1</sup> By way of background, it is extraordinary for an elector to case his or her vote for a hostile party. So called "faithless electors" have cast only nine of the 21,291 electoral votes recorded since 1796. No elector has defected since 1988, and two defections never have occurred in a single election.

**FIRST CAUSE OF ACTION**

**AGAINST SECRETARY BOWEN**

**INJUNCTIVE RELIEF PRECLUDING SECRETARY BOWEN FROM  
PLACING SENATOR McCain'S NAME ON THE CALIFORNIA  
BALLOT FOR THE NOVEMBER 2008 PRESIDENTIAL ELECTION.**

**U.S. Const., Art. II**

19. Plaintiff realleges all above allegations.

20. Senator McCain is ineligible to be President of the United States under Article II of the United States Constitution because he is not a "natural-born citizen."

21. Because Senator McCain will be the Republican nominee for President, Secretary Bowen is required by State law to place Senator McCain on the ballot as a presidential candidate. (Cal. Elections Code § 6901.)

22. Therefore, an actual controversy now exists between plaintiffs and Secretary Bowen, regarding Senator McCain's eligibility to be on the California ballot. The controversy is ripe for review and will, until resolved, damage plaintiffs.

23. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by Senator McCain's illegal and illegitimate presence on the ballot because they are competing on the same ballot. The harm sustained by being forced to compete against – and potentially be defeated by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied after the November general election in any manner.

24. This Court therefore should use its inherent equitable power to enforce the Constitution and enjoin the Secretary from following California law and placing Senator McCain's name on the official California Ballot.

**SECOND CAUSE OF ACTION**

**INJUNCTIVE RELIEF PREVENTING THE REPUBLICAN NATIONAL  
COMMITTEE, CALIFORNIA REPUBLICAN PARTY, AND SENATOR  
McCain FROM NOMINATING SENATOR McCain FOR PRESIDENT.**

**U.S. Const., Art. II**

25. Plaintiff realleges all above allegations.

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26. Defendants RNC, CRP and Senator McCain are each bound by Article II of the United States Constitution because they have each accepted public funds in connection with this election, and because Article II is inherently binding on presidential candidates and nominations.

27. Senator McCain is ineligible to be President of the United States under Article II of the United States Constitution because he is not a “natural-born” citizen.

28. Senator McCain is running for president.

29. Defendants RNC and CRP are in the process of nominating Senator McCain for President, and Senator McCain’s presidential nomination is set to be formalized during the Republican National Convention of September 1-4, 2008.

30. Therefore, an actual controversy now exists between plaintiff and defendants, RNC, CRP and McCain, regarding the ability of Senator McCain to be on the California ballot, and run for, and serve as, President of the United States. The controversy is ripe for review and will, until resolved, damage plaintiffs.

31. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by Senator McCain’s illegal and illegitimate presence on the ballot because they are competing on the same ballot. The harm sustained by being forced to compete against – and potentially be defeated by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied after the November general election in any manner.

32. This Court therefore should use its inherent equitable power to enforce the Constitution and enjoin the RNC and the CRP from nominating Senator McCain for President of the United States, and further enjoin Senator McCain from running for President of the United States.

### THIRD CAUSE OF ACTION

#### **INJUNCTIVE RELIEF PREVENTING THE REPUBLICAN NATIONAL COMMITTEE, CALIFORNIA REPUBLICAN PARTY, AND SENATOR McCain FROM NOMINATING SENATOR McCain FOR PRESIDENT.**

#### **Cal. Bus. & Prof. Code § 17200**

33. Plaintiff realleges all above allegations.

34. Senator McCain is running for president.

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35. Defendants RNC and CRP are in the process of nominating Senator McCain for President.

36. The Republicans, including the Republican National Committee, the California Republican Party, and their Candidate, Senator McCain, are an “organization” for purposes of California Business and Professions Code section 17200 *et seq.*

37. Defendants RNC, CRP and Senator McCain are each engaging in “unfair competition” for purposes of section 17200, *et seq.*, because their nomination, candidacy and campaign for President violates Article II of the U.S. Constitution.

38. An actual controversy now exists between plaintiff and defendants McCain, RNC and CRP, regarding the ability of Senator McCain to be on the California ballot, and run for, and serve as, President of the United States. The controversy is ripe for review and will, until resolved, damage plaintiffs.

39. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by Senator McCain’s illegal and illegitimate presence on the ballot because they are competing on the same ballot. The harm sustained by being forced to compete against – and potentially be defeated by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied after the November general election in any manner.

40. This Court therefore should use its inherent equitable power to enforce the Constitution and enjoin the RNC and the CRP from nominating Senator McCain for President of the United States, and further enjoin Senator McCain from running for President of the United States.

#### FOURTH CAUSE OF ACTION

#### INJUNCTIVE RELIEF AGAINST DOES ONE THROUGH FIFTY-FIVE, INCLUSIVE FROM CASTING THEIR ELECTORAL VOTES FOR SENATOR MCCAIN.

#### U.S. Const., Art. II

41. Plaintiff realleges all above allegations.

42. The Republican’s presidential electors are bound by Article II of the United States Constitution because the Republican Party has accepted public funds in connection with this

1 election, and votes cast by presidential electors are inherently subject to the requirements of  
2 Article II.

3 43. On information and belief, the overwhelming majority, if not all, of the fifty-five  
4 Republican electors of California will vote for the Republican presidential candidate, Senator  
5 McCain, if the Republicans win California's electoral votes in the November election.

6 44. Senator McCain is ineligible to be president under Article II of the U.S.  
7 Constitution because he is not a "natural born" citizen as defined there.

8 45. Therefore, an actual controversy now exists between plaintiffs and defendants  
9 McCain, RNC and CRP, regarding the ability of Senator McCain to be on the California ballot,  
10 and run for, and serve as, President of the United States. The controversy is ripe for review and  
11 will, until resolved, damage plaintiffs.

12 46. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by  
13 Senator McCain's illegal and illegitimate presence on the ballot because they are competing on the  
14 same ballot. The harm sustained by being forced to compete against – and potentially be defeated  
15 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied  
16 after the November general election in any manner.

17 47. This Court therefore should use its inherent equitable power to enforce the  
18 Constitution and enjoin the California Republican Presidential electors from casting their votes for  
19 Senator McCain.

## 20 **FIFTH CAUSE OF ACTION**

### 21 **INJUNCTIVE RELIEF AGAINST DOES ONE THROUGH FIFTY-FIVE,** 22 **INCLUSIVE FROM CASTING THEIR ELECTORAL VOTES FOR** 23 **SENATOR MCCAIN.**

#### 24 **Cal. Bus. & Prof. Code § 17200**

25 48. Plaintiff realleges all above allegations.

26 49. The overwhelming majority, if not all, of the California Republican presidential  
electors intent to vote for Senator McCain for President.

27 50. The Republican party, including its electors, are an "organization" for purposes of  
28 California Business and Professions Code section 17200 *et seq.*



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1           51.       The Republicans and their electors are engaging in “unfair competition” for  
 2 purposes of section 17200, *et seq.*, because their efforts to elect Senator McCain as President  
 3 violates Article II of the U.S. Constitution.

4           52.       An actual controversy now exists between plaintiffs and defendants McCain, RNC  
 5 and CRP, regarding Senator McCain’s eligibility to run for, and serve as, President. The  
 6 controversy is ripe for review and will, until resolved, damage plaintiffs.

7           53.       On information and belief, the overwhelming majority, if not all, of the fifty-five  
 8 Republican electors of California will vote for the Republican presidential candidate, Senator  
 9 McCain, if the Republicans win California’s electoral votes in the November election.

10          54.       Senator McCain is ineligible to be president under Article II of the U.S.  
 11 Constitution because he is not a “natural born” citizen as defined there.

12          55.       Therefore, an actual controversy now exists between plaintiffs and defendants  
 13 McCain, RNC and CRP regarding the ability of Senator McCain to be on the California ballot, and  
 14 run for, and serve as, President of the United States. The controversy is ripe for review and will,  
 15 until resolved, damage plaintiffs.

16          56.       AIP and its electors, including plaintiff Robinson, will be irreparably harmed by  
 17 Senator McCain’s illegal and illegitimate presence on the ballot because they are competing on the  
 18 same ballot. The harm sustained by being forced to compete against – and potentially be defeated  
 19 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied  
 20 after the November general election in any manner.

21          57.       This Court therefore should use its inherent equitable power to enforce the  
 22 Constitution and enjoin the California Republican Presidential electors from casting their votes for  
 23 Senator McCain.

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**SIXTH CAUSE OF ACTION**

**AGAINST ALL DEFENDANTS**

**DECLARATORY JUDGMENT THAT SENATOR MCCAIN IS INELIGIBLE TO BE PRESIDENT UNDER ARTICLE II OF THE U.S. CONSTITUTION.**

58. Plaintiffs reallege all above allegations.

59. As set forth above, there exists an actual controversy between plaintiffs and defendants RNC, CRP, Senator McCain, and the California Republican presidential electors (Does one through fifty-five) regarding the ability of Senator McCain to be on the California ballot, and be run for, and serve as, President of the United States.

60. To the extent defendants RNC, CRP, Senator McCain and the California Republican electors (Does One through Fifty Five) are not subject to the limitations of Article II of the U.S. Constitution, this Court should issue a declaratory judgment that Senator McCain is ineligible to be president under Article II, and therefore the respective nomination, campaigns and electoral votes of these defendants are ineffective because Senator McCain cannot serve as president.

**PRAYER**


WHEREFORE, plaintiffs pray for judgment as follows:

1. For a permanent injunction prohibiting Secretary Bowen from placing Senator McCain's name on the California ballot as a candidate for president;
2. For a permanent injunction prohibiting the RNC and the CRP from nominating Senator McCain for President of the United States, prohibiting Senator McCain from running for President of the United States, and prohibiting the RNC, CRP and Senator McCain from attempting to place Senator McCain's name on the California ballot for the upcoming 2008 presidential election;
3. For a permanent injunction prohibiting the California Republican Presidential electors from casting their votes for Senator McCain;
4. For a declaratory judgment that Senator McCain is ineligible to serve as President of the United States under Article II of the U.S. Constitution;

5. For costs of suit;
6. For attorneys' fees as provided for by law; and
7. All other relief the Court deems just and proper.

Dated: August 11, 2008

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By: Gregory S. Walston

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